TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~325.~~ 98

THOMAS H. POWERS AND WILLIAM WEIGHTMAN, COPARTNERS, TRADING AS POWERS & WEIGHTMAN, PLAINTIFFS IN ERROR,

vs.

SETH I. COMLY, COLLECTOR OF THE CUSTOMS FOR THE DISTRICT OF PHILADELPHIA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED JANUARY 24, 1877.

SUPREME COURT OF THE UNITED STATES.

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1 *Writ of error.*

UNITED STATES OF AMERICA, *sct:*

The President of the United States to the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, between Thomas H. Powers and William Weightman, copartners, trading as Powers and Weightman, plaintiffs, and Seth I. Comly, collector of the customs for the district of Philadelphia, defendant, in a plea of trespass on the case, a manifest error has intervened to the great damage of the said Thomas H. Powers and William Weightman, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then under your seal, you do distinctly and openly send the record and process in the suit aforesaid with all things concerning them and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this thirteenth day of November, A. D. one thousand eight hundred and seventy-six, and in the one hundred and first year of the Independence of the said United States.

[SEAL.]

SAMUEL BELL,
Clerk of Circuit Court of U. S.

Allowed.

W. MCKENNAN, *Cir. Judge.*

The return to the foregoing writ appears by the schedule hereto annexed.

SAMUEL BELL,
Clerk U. S. Cir. Ct.

2 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit. October session, 1874.

THOMAS H. POWERS AND WILLIAM WEIGHTman, copartners, trading as Powers and Weightman,
vs.
SETH I. COMLY, COLLECTOR OF THE CUSTOMS for the district of Philadelphia.
} No. 68.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, ss:

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session 1874. No. 68.

It is thus contained:

Be it remembered, that heretofore, to wit, on the twenty-third day of October, in the year of our Lord one thousand eight hundred and seventy-four, came the above-named plaintiffs, by their attorneys,
3 R. J. C. Walker and William Ernst, esquires, and filed their præcipe for a summons in a plea of trespass on the case against the above-named defendant, which said præcipe was in the words following, to wit:

Præcipe.

Circuit ct. U. S. E. D. Pa., Oct. sess., 1874.

THOMAS H. POWERS AND WILLIAM WEIGHTman, copartners, trading as Powers & Weightman,
vs.
SETH I. COMLY, COLLECTOR OF CUSTOMS for the port of Philadelphia. } No. .

Issue summons case in above, returnable to 1st Monday of November, 1874.

R. J. C. WALKER,
WM. ERNST,
Att'ys for Pl'ffs.

OCT. 23, 1874.

To the clerk circ't ct. E. dist. Penn'a.

4 (Indorsed:) No. 68. Oct'r S., 1874. C. C't U. S. E. D. Pa. Powers & Weightman vs. S. I. Comly, collector, &c. Præcipe for sum's case. Walker, Ernst, att'ys for pl'ffs.

On the same day, to wit, on the twenty-third day of October, A. D. 1874, a writ of summons issued out of said clerk's office against said defendant in said entitled cause, which said writ, together with the return of the marshal thereon, is in the words following, to wit:

5 *Summons.*

UNITED STATES,
Eastern District of Pennsylvania, set:

The President of the United States to the marshal of the eastern district of Pennsylvania, greeting:

We command you that you summon Seth I. Comly, collector of customs for the port of Philadelphia, late of your district, if he may be found therein, so that he be and appear before the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, of the third circuit, at a session of the same court to be holden at Philadelphia, on the first Monday of November next, to answer to Thomas H. Powers and William Weightman, copartners, trading as Powers & Weightman, in a plea of trespass on the case. And have you then there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 23rd day of October, A. D. 1874, and in the 99th year of the Independence of the United States.

[SEAL.]

SAMUEL BELL,
Clerk of Circuit Court U. S.

6 Oct. 24, 1874, at Philad'a, in my district, served the within writ of Seth I. Comly, by reading the same in his hearing and leaving a true and attested copy thereof with him.

So answers—

JAMES N. KERNS,
U. S. Marshal.
P'r JACOB S. DECKER,
Deputy.

(Indorsed:) No. 68. Circuit court, October session, 1874. Powers and Weightman vs. Seth I. Comly, collector, &c. Summons case. Returnable on the first Monday of November next. R. J. C. Walker, Wm. Ernst, attorney' for plaintiff. $2.40. Filed 2nd November, 1874.

7 *Order for appearance.*

And afterwards, to wit, on the twenty-sixth day of October, A. D. 1874, said defendant, by his attorney, William McMichael, esquire, filed in said clerk's office his order for appearance, which said order is in the words following, to wit:

C. C. U. S., Oct. sess., 1874.

POWERS & WEIGHTMAN
vs.
SETH I. COMLY, COLLECTOR, &C. } No. 68.

The clerk will enter my appearance in the above case for the defendant.

WILLIAM McMICHAEL,
Per H. P. B.,
Att'y for Def't.

OCT. 26, 1874.
To clerk C. C. U. S.

(Indorsed:) 68. Oct. sess., 1874. C. C. U. S. Powers & Weightman vs. Seth I. Comly, collector, &c. Order for appearance. Filed 26 October, 1874. William McMichael.

8 *Rule on plaintiffs to declare, &c.*

And afterwards, to wit, on the nineteenth day of February, A. D. 1875, the defendant, by William McMichael, esquire, his attorney, comes into court here and enters a rule on the plaintiffs to declare in two weeks or judgment sec. reg.

And afterwards, to wit, on the fifth day of March, A. D. 1875, the plaintiffs, by R. J. C. Walker and William Ernst, esquires, their attorneys, come into court here and file their narr in assumpsit, which being read, is as follows, to wit:

9 *Narr.*

In the circuit court of the United States for the eastern district of Pennsylvania, of October sessions, 1874.

THOMAS H. POWERS AND WILLIAM WEIGHTMAN, copartners, trading as Powers & Weightman,
vs.
SETH I. COMLY, COLLECTOR OF CUSTOMS FOR the port of Philadelphia. } No. 68.

Seth I. Comly, collector of customs for the port of Philadelphia, was

summoned to answer Thomas H. Powers and William Weightman, co-partners, trading as Powers & Weightman, of a plea of trespass on the case, and thereupon the said plaintiffs, by R. J. C. Walker and William Ernst, their attorneys, complain—

10 For that whereas the said defendant, Seth I. Comly, collector aforesaid, on the first day of October, in the year of our Lord one thousand eight hundred and seventy-four, to wit, at the county aforesaid, was indebted to the said plaintiffs, Powers & Weightman, in the sum of fifty thousand dollars, lawful money of the United States of America for divers goods, wares, and merchandise by the said plaintiffs to the said defendant before that time sold and delivered at his special instance and request.

And also in the further sum of fifty thousand dollars, like money, for the work, labour, care, and diligence of the said plaintiffs by them before that time done, performed, and bestowed in and about the business of the said defendant at his like special instance and request.

And also in the further sum of fifty thousand dollars, like money, for so much money by the said plaintiffs before that time lent and advanced and paid, laid out and expended to and for the use of the said defendant, and at his like instance and request.

And also in the further sum of fifty thousand dollars, like money, for other money by the said defendant before that time had and received to and for the use of the said plaintiffs.

And also in the further sum of fifty thousand dollars, like money, for so much money then and there found to be due and owing from the said defendant to the said plaintiffs, and in arrear and unpaid upon an account then and there stated between them.

And being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, undertook and faithfully promised the said plaintiffs to pay them the said several sums of money in this count mentioned, when he, the said defendant, should be thereunto afterwards requested.

Nevertheless the said defendant, not regarding his said several promises and undertakings, hath not paid the said several sums of money, or any of them, or any part thereof, to the said plaintiffs, although often requested so to do, but the said defendant hath hitherto neglected and refused, and still doth neglect and refuse to pay the same to the said plaintiffs to the damage of the said plaintiffs of one hundred thousand dollars, and therefore they bring suit, &c.

John Doe, Richard Roe, pledges, &c.

WM. ERNST,
Attorney for Pl'ff.

5 MARCH, 1875.

To the clerk of the circuit court of the United States for the eastern district of Pennsylvania.

11 (Indorsed:) 68. October S., 1874, C. C. U. S. Powers & Weightman vs. Seth I. Comly, collector, &c. Narr in assumpsit. Ernst, Walker, for pl'ff's. Filed March 5, 1875.

12 And afterwards, to wit, on the third day of March, A. D. 1876, the said defendant, Seth I. Comly, by John K. Valentine, esquire, his attorney, came into court here and filed his plea, which said plea is as follows, to wit:

Plea.

C. C. U. S., Oct. sess., 1874.

POWERS *vs.* COMLY. } No. 68.

And the said defendant, by John K. Valentine, esq., his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake or promise in manner and form as the said plaintiffs have above complained thereof against him, and of this he puts himself upon the country, &c.

JOHN K. VALENTINE,
Att'y for Def't.

13 (Indorsed:) No. 68. Oct. sess., 1874, C. C. U. S. Powers. vs. Comly. Pleas. J. K. Valentine, esq. Filed March 3rd, 1876.

Trial.

And afterwards, to wit, on the thirteenth day of April, A. D. 1876, this cause being now called for trial by order of the court, a jury being called, come, to wit, &c.

1. George K. Mecke.
2. Charles W. Newhouse.
3. Frederick Fox.
4. Jeremiah Mohler.
5. George W. Jones.
6. Abraham B. Long.
7. Edmund C. Bonsal.
8. Henry B. Talley.
9. John B. Holloway.
10. William A. Bosler.
11. William J. Burkhardt.
12. Martin S. Fry.

Who are respectively sworn or affirmed to try the issue joined and a true verdict render according to the evidence.

14 *Special verdict.*

And afterwards, to wit, on this day, the jurors aforesaid, on their oaths or affirmations aforesaid respectively, do say that, in the issue joined, they find—

I. That the plaintiffs are citizens of the city of Philadelphia, where they conduct their business as manufacturing chemists.

II. That for the purposes of said business the plaintiffs import and use large quantities of opium.

III. That the plaintiffs imported into the port of Philadelphia, in the year 1874, from Liverpool, England, a place west of the Cape of Good Hope, certain opium, the growth or product of Persia, in Asia, a country east of the Cape of Good Hope.

IV. That the opium was carried from Persia to England by way of the Isthmus of Suez and the Mediterranean Sea.

V. That the defendant, as collector of the port of Philadelphia, declined to deliver the said opium to the plaintiffs without first paying the additional duty of 10 per cent. imposed by section 2501 of the Revised Statutes and 3' section act of June 6th, 1872.

VI. That the plaintiffs duly protested against the payment of the said duty of 10 per cent., and duly appealed from the decision of the collector; which appeal was duly referred to the Treasury Department of the United States, by which the decision of the collector was affirmed.

VII. That the said collector has collected from the plaintiffs, on certain opium imported by them in the manner above mentioned, the said additional duty of 10 per cent., amounting to $6,349.60, to recover which the plaintiffs have brought suit within the proper period prescribed by law.

VIII. That the said jurors further say that they are ignorant, in point of law, on which side they ought, upon these facts, to find the issue; but that if the court shall be of opinion that the plaintiffs are entitled to recover the moneys thus paid as aforesaid to the defendant, or any part of it, then they find for the plaintiffs, and assess the damages at such sum as shall be equal to the money thus to be recovered, together with interest at the rate of six per cent. per annum (in gold) from the dates of payments; but that if the court shall be of opinion that the plaintiffs are not entitled to recover the said moneys, or any part thereof, then they find for the defendant.

15 Whereupon afterward, to wit, on the fourteenth day of October, A. D. 1876, before the honorable William McKennan, judge of the said circuit court, this cause came on to be heard on motion for judgment on special verdict, and the court having heard the argument of William Ernst and Henry Flanders, esquires, counsel for the plaintiffs, and John K. Valentine, esquire, counsel for the defendant, takes the same under advisement.

Judgment on special verdict.

And afterwards, to wit, on the twenty-sixth day of October, A. D. 1876, the premises being seen and fully understood by the court here, and mature deliberation being had thereon, it is ordered that judgment be entered on the special verdict in favor of the defendant.

16 And afterwards, to wit, on the fifteenth day of December, A. D. 1876, came again the said plaintiffs, Thomas A. Powers and William Weightman, by their said attorneys, William Ernst and Henry Flanders, esquires, and filed in the clerk's office of said court there bond herein, which said bond is in the words following, to wit:

Bond sur writ of error.

In the circuit court of the United States in and for the eastern district of Pennsylvania. October session, 1874.

THOMAS H. POWERS AND WILLIAM WEIGHTman, copartners, trading as Powers and Weightman,
vs.
SETH I. COMLY, COLLECTOR OF THE CUSTOMS for the district of Philadelphia. } No. 68.

Know all men by these presents, that we, Thomas H. Powers and William Weightman, as principals, and John F. Weightman and William Weightman, jr., all of the city of Philadelphia, as

17 sureties, are held and firmly bound unto Seth I. Comly, collector of the customs of the district of Philadelphia, in the sum of five hundred dollars, lawful money of the United States of America, to which payment well and truly to be made we do bind and oblige ourselves, our heirs, executors, and administrators, and every of them, jointly and severally, firmly by these presents. Sealed with our seals, dated this

eighth day of December, anno Domini one thousand eight hundred and seventy-six.

Whereas in the above-entitled suit a judgment was rendered against the above-named plaintiffs, Thomas H. Powers and William Weightman, to which judgment a writ of error from the Supreme Court of the United States has been obtained by the said Thomas H. Powers and William Weightman, the same being returnable to the second Monday of October, A. D. 1877:

Now the condition of this obligation is such that if the said Thomas H. Powers and William Weightman shall prosecute the said writ
18 of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

THOMAS H. POWERS. [L. S.]
WILLIAM WEIGHTMAN. [L. S.]
JOHN F. WEIGHTMAN. [L. S.]
WM. WEIGHTMAN, JR. [L. S.]

Sealed and delivered in the presence of us—
SAMUEL BELL.
WM. ERNST.

(Indorsed:) No. 68. October, 1874. Cir. c't U. S., E. D. of Pa. Powers et al. vs. Comly. Bond sur writ of error. Approved. W. McKennan, cir. judge. Filed Dec'r 15, 1876.

19 *Citation sur writ of error.*

The United States of America to Seth I. Comly, collector of the customs for the district of Philadelphia, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant of a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein Thomas H. Powers and William Weightman are plaintiffs in error and you are defendant in error, to show cause, if any there be, why judgment rendered against said plaintiffs in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 15th day of December, in the year of our Lord one thousand eight hundred and seventy-six.

W. MCKENNAN,
Cir. Judge.

20 Service accepted for defendant.

JOHN K. VALENTINE,
Att'y for Defendant.

12, 18, '76.

(Indorsed:) No. 68. Oct'r sess., 1874. Cir. C't U. S. E. D. of Pa. Powers et al. vs. Comly. Citation sur writ of error. Returned Dec'r 18, 1876.

21 *Assignment of error.*

In the Supreme Court of the United States, of October term, 1877.

THOMAS H. POWERS & WILLIAM WEIGHTMAN, trading as Powers & Weightman, pl'ffs in error,
vs.
SETH I. COMLY, COLLECTOR OF CUSTOMS OF THE port of Philadelphia, Pennsylvania, def't in error. } No. .

Sur writ of error to the circuit court of the United States for the eastern district of Pennsylvania, of October sessions, 1874. No. 68.

Assignment of error.

The plaintiffs in error file the following assignment of errors:

That the learned (circuit) court erred in entering judgment for the defendant below on the special verdict as found by the jury.

R. J. C. WALKER,
WILLIAM ERNST,
HENRY FLANDERS,
Of Counsel for Pl'ffs.

To the hon. the clerk of the Supreme Court of the United States, Washington, D. C.

22 *Certificate of clerk.*

Circuit court of the United States, eastern district of Pennsylvania, ss:

I, Samuel Bell, clerk of the circuit court of the United States for the eastern district of Pennsylvania, do hereby certify the foregoing to be a true and complete copy of all the papers filed, proceedings therein had, and process issued in a certain cause, wherein Thomas H. Powers and William Weightman, co-partners, trading as Powers and Weightman, are plaintiffs, and Seth I. Comly, collector of the customs for the district of Philadelphia, is defendant, as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court, at my office, in the city of Philadelphia, in said district, this eleventh day of January, in the year of our Lord one thousand eight hundred and seventy-seven, and of our Independence the one hundred and first.

[SEAL.] SAMUEL BELL, *Clerk.*

(Indorsement on cover:) No. 325. Thomas H. Powers and William Weightman, copartners, trading as Powers & Weightman, plaintiffs in error, vs. Seth I. Comly, collector of the customs for the district of Philadelphia. E. Pennsylvania C. C. U. S. Filed 24th January, 1877.